

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Juan Arango	Team: Squad #9	CCRB Case #: 202005423	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/14/2020 6:00 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 49	18 Mo. SOL 1/14/2022	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 07/31/2020 4:17 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 07/31/2020 4:17 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Cristian Diaz	14078	961737	049 PCT
2. POM Gregory Hernandez	26400	938661	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vladimir Delgado	01433	940071	049 PCT
2. POF Jessica Rabaa	01497	963704	049 PCT
3. SGT Ruthven Goddard	04801	927144	049 PCT
4. POM Samuel Ju	15292	966125	049 PCT
5. POF Gabriela Contreras	23724	963928	049 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Hernandez	Abuse: Police Officer Gregory Hernandez forcibly removed § 87(2)(b) to the hospital.	
B.POM Gregory Hernandez	Abuse: Police Officer Gregory Hernandez threatened to arrest § 87(2)(b)	
C.POM Cristian Diaz	Off. Language: Police Officer Cristian Diaz made offensive remarks to § 87(2)(b)	

### Case Summary

On July 31, 2020, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On July 14, 2020, at approximately 6:00 p.m., PO Gregory Hernandez and PO Cristian Diaz, of the 49<sup>th</sup> Precinct, responded to § 87(2)(b) in the Bronx, after § 87(2)(b) called 911 and reported that her neighbor was banging on her door and cursing at her. At some point, § 87(2)(b) exited her building and observed PO Hernandez and PO Diaz speaking with her neighbor. At some point, PO Hernandez told § 87(2)(b) that she was going to the hospital and requested an ambulance (**Allegation (A) Abuse of Authority- Forcible removal to the hospital,** § 87(2)(g)). As they stood outside of her building, PO Hernandez allegedly told § 87(2)(b) not to talk to him in the way she was doing because she knew he could arrest her (**Allegation (B) Abuse of Authority- Threat of arrest,** § 87(2)(g)). § 87(2)(b) continued telling PO Hernandez that her neighbor banged on her door and that he needed to arrest her. Right after, PO Hernandez repeated to § 87(2)(b) “I am going to arrest you” (**within Allegation B**). At the end, § 87(2)(b) was taken to the hospital (**within Allegation A**). While inside the ambulance, PO Diaz allegedly told one of the EMTs, “She’s crazy. Don’t worry about it. Nobody will listen to her with the record she has. We checked in the computer, she’s crazy” (**Allegation (C) Offensive Language – Other,** § 87(2)(g)).

The investigation obtained Body-Worn Camera (BWC) footage for this incident (**Board Review 01**)

### Findings and Recommendations

#### **Allegation (A) Abuse of Authority: Police Officer Gregory Hernandez forcibly removed § 87(2)(b) to the hospital.**

At the 20:02:28 timestamp of PO Hernandez’s BWC footage (**Board Review 03**), § 87(2)(b) tells PO Hernandez that her female neighbor, who is standing near PO Hernandez with a group of civilians, came to her apartment to bang on her door and that what could have happened if she broke the door down. In response, the female neighbor replies to § 87(2)(b) that she was lying; to which, § 87(2)(b) begins to raise her voice and says that she is the one who is lying. § 87(2)(b) then begins to complain that her neighbors are always in the building making noise as she shows signs of being upset. At the 20:04:14 timestamp, § 87(2)(b) claims again that the female individual went to her apartment, kicked her door and that everyone, including the superintendent, grabbed the female because she was acting “crazy.” PO Hernandez then explains to § 87(2)(b) that they cannot do anything because there is no crime occurring. At the 20:05:05 timestamp, PO Hernandez interviews the superintendent of the building, who is standing outside with the group of civilians. The superintendent and another male tell PO Hernandez that § 87(2)(b) lives on the second floor, that her neighbors on the third floor, but she makes a lot of noise complaints against them. The superintendent and the male then tell PO Hernandez that § 87(2)(b) son is a NYPD police officer. At the 20:07:33 timestamp, PO Hernandez tells PO Diaz that this incident is a civil matter and that he will call § 87(2)(b) son to speak with him. At the 20:10:03 timestamp, PO Hernandez asks § 87(2)(b) for her son’s phone number, but § 87(2)(b) refuses. At the 20:10:58 timestamp, PO Hernandez explains to § 87(2)(b) that he needs to speak to her son and § 87(2)(b) says that he does not have to speak to him. § 87(2)(b) then adds that he came and should defend her instead of her neighbors. PO Hernandez says that he is not defending anyone and § 87(2)(b) interrupts him; to which, PO Hernandez says in Spanish, “Much better. You are going to the hospital.” § 87(2)(b) then begins claiming that her neighbors have drug businesses and that there are people who go in and out of their apartment. At the 20:12:50 timestamp, § 87(2)(b) repeats that she informed PO Hernandez that the female kicked her door. PO Hernandez and § 87(2)(b) then walks into the apartment building and see that her door does not have any damage. Right after, PO Hernandez turns off his BWC at the 20:15:06-timestamp.

At the 20:18:08 timestamp of PO Hernandez's BWC footage, PO Hernandez tells PO Diaz that § 87(2)(b) is an EDP and that he will be calling a "bus" for her (**Board Review 04**). Right after, PO Hernandez requests an ambulance over the radio to respond to their location. At the 20:18:56 timestamp, PO Hernandez says out loud, "You guys can entertain her for now until the bus gets here."

During his CCRB interview, PO Hernandez explained that he had responded to § 87(2)(b) apartment on different occasions; during which, she complained numerous times about drug activity inside other people's apartments on the second floor (**Board Review 05**). At some point, § 87(2)(b) explained to PO Hernandez that there is a ladder inside her closet that traveled one apartment to another. PO Hernandez said he believed § 87(2)(b) needed to go to the hospital because of the general nature of the statements she was making which he characterized as irrational and led him to believe that she was not in her right mind. This collective sum of statements § 87(2)(b) made led PO Hernandez to believe that she required some sort of psychiatrist evaluation at the hospital. PO Hernandez stated that there were no other factors involved that led him to believe she needed to be taken to the hospital. PO Hernandez did not know if § 87(2)(b) was a threat to herself and did not recall if she ever posed a threat to others or if there was anything that indicated to him that she was a threat to others. PO Hernandez stated that there was a point where they had to take action because they could not be there all day. PO Hernandez added that the EMTs agreed with him that § 87(2)(b) was acting irrational and that she should go to the hospital to get evaluated.

Patrol Guide Procedure 221-13 (**Board Review 06**) states that an office must take into protective custody and have removed to the hospital in an ambulance, any person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others.

§ 87(2)(g)

#### **Allegation (B) Abuse of Authority: Police Officer Gregory Hernandez threatened to arrest**

§ 87(2)(b)

During the CCRB interview, § 87(2)(b) said she began to take a video of a license plate with her cellphone and her male neighbor asked why she was taking a video of the vehicle and gave her the "middle finger" (**Board Review 02**). § 87(2)(b) told PO Hernandez that the neighbor had insulted her and PO Hernandez allegedly replied that the neighbor was not attacking her and that he could say whatever he wanted with his mouth. § 87(2)(b) replied, "Okay, then I'll use my mouth to insult everyone and say what I want. I am going to offend. I am going to insult." In response, PO Hernandez allegedly said, "Don't talk to me like that because you know I can arrest you." § 87(2)(b) asked PO Hernandez why he would arrest her and PO Hernandez allegedly replied, "Because you are the one who is upset." Right after, § 87(2)(b) repeated that her female neighbor banged on her door and that PO Hernandez needed to arrest her. § 87(2)(b) neighbor said that she never went to bang on her door and the civilians on scene defended the neighbor out loud. In response, PO Hernandez told § 87(2)(b) "I am going to arrest you."

At the 20:24:57 timestamp of PO Hernandez's BWC footage, PO Hernandez tells a group of civilians, including § 87(2)(b) neighbor that they are good to go if they want (**Board Review 04**). The female neighbor asks PO Hernandez if he is sure and PO Hernandez tells the female individual that they are good to go. The officers then say bye to the civilians on scene as he remains at the back of the female's vehicle. At the 20:25:23 timestamp, § 87(2)(b) is captured getting close to PO Hernandez as she looks behind him. § 87(2)(b) raises her cellphone at chest level and looks at the screen of her cellphone. PO Hernandez then asks § 87(2)(b) in Spanish, "Why are you taking the license plate of the woman?" § 87(2)(b) replied, "I didn't take anything" and walked

away onto the sidewalk. PO Hernandez then looks at PO Diaz and says to him that § 87(2)(b) was trying to take a photo of the license plate. Right after, the ambulance arrives to the scene.

During his CCRB interview, PO Hernandez did not recall saying to § 87(2)(b) that he would arrest her for any reason and did not believe § 87(2)(b) could have been arrested for any reason (**Board Review 05**).

§ 87(2)(g)

#### **Allegation (C): Offensive Language: Police Officer Cristian Diaz made offensive remarks to**

§ 87(2)(b)

During her CCRB interview, § 87(2)(b) stated that after she was brought into the ambulance, PO Diaz remained in the back of the ambulance with her (**Board Review 02**). The EMTs drove the ambulance to § 87(2)(b). PO Diaz spoke to the male EMT, who was driving the ambulance. PO Diaz allegedly said, "She's crazy. Don't worry about it. Nobody will listen to her with the record she has. We checked in the computer, she's crazy." § 87(2)(b) remained in the ambulance with PO Diaz and the male EMT for approximately 30 minutes before being escorted into the hospital.

PO Diaz's BWC captures the moment § 87(2)(b) is put into the ambulance until she is brought into the emergency room (**Board Review 10**). The male EMT is at the back of the ambulance with § 87(2)(b) and PO Diaz while the female EMT is the operator. At the 9:25 minute mark, § 87(2)(b) asks PO Diaz to remove the handcuffs off her; to which, PO Diaz says no. § 87(2)(b) then asks PO Diaz why they do not allow her to make a phone call. In response, PO Diaz says, "You can't." § 87(2)(b) then tells PO Diaz that what he is doing is against the law and says that they are the ones crazy. In response, PO Diaz replies, "If you wanna think we are crazy, then we are crazy. That is why we are going to the hospital. It's all I can say." § 87(2)(b) then tells PO Diaz, "You should take those crackheads. Damn crazy." At the 10:07 minute mark, PO Diaz tells § 87(2)(b) "Feel how you feel, if you want to call us crazy, then we are crazy, but I am not going to sit here and argue with you." PO Diaz did not, at any point, call § 87(2)(b) "crazy."

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b)
- PO Hernandez has been a member of service for 16 years and has been a subject in six CCRB complaints and nine allegations, of which one was substantiated:
  - **201603963** involved substantiated allegations of Question against PO Hernandez. The Board recommended formalized training and the NYPD imposed formalized training (see officer history).
  - PO Diaz has been a member of service for five years and this is the first CCRB complaint that he has been a subject in (see officer history).

#### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.

- As of October 27, 2021, the New York City Office of the Comptroller has not record of a Notice of Claim being filed in regards to this complaint (**Board Review 09**).
  - According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review 08**).
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Squad:     \_\_\_9\_\_\_

Investigator:	_____ <u>Juan Arango</u> _____	_____ <u>Inv. Juan Arango</u> _____	_____ <u>1/11/2022</u> _____
	Signature	Print Title & Name	Date

Squad Leader:	_____ <u>Monique West</u> _____	_____ <u>IM Monique West</u> _____	_____ <u>01/13/2022</u> _____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date